of indefinite duration, and showing that the Rule against Perpetuities is only concerned with the time of the vesting of future estates, *Pulitzer* v. *Livingston* is a valuable case on the question of the validity of powers of sale. A power of sale which may be exercised beyond the period of lives in being and twenty-one years is not bad if it is within the control of the owner of the estate, just as a contingent limitation after an estate tail is unobjectionable, because at any time it may rightfully be destroyed. See Gray, Perpet. §§ 490, 498, 506. While in *Pulitzer* v. *Livingston* each *cestui* could revoke the trusts as to his share, should a different result be reached where all the *cestuis* must join to defeat the power of sale? There is no practical reason for a difference, and technical requirements seem to be fully satisfied if the power is actually destructible. That is the result in *Seamans* v. *Gibbs*, 132 Mass. 239, though the reasons given are not satisfactory. In *Goodier* v. *Edmunds*, [1893] 3 Ch. 455, however, it was held otherwise, but without any allusion to this question. See 7 HARVARD LAW REVIEW, 427, where that case is criticised.

INJUNCTIONS AGAINST INTERFERENCE WITH BUSINESS.[1] — After an elaborate reargument by the complainants, the Supreme Court of Rhode Island in a short rescript has recently affirmed their prior decision in the case of *Macauley Bros.* v. *Tierney*, 33 Atl. Rep. 1. At the time of its prior decision, the case attracted considerable attention and some adverse comment. It belongs to that general class of cases which appears to be rapidly increasing in number at the present day, in which the plaintiffs seek to enjoin the defendants from interfering with their business rights. The list of cases in which the plaintiff has succeeded in this is a very long one; and those in which the defendants have succeeded in avoiding an injunction against them, though not nearly as numerous, yet constitute a respectable number, of which *McGregor* v. *The Mogul Steamship Co.* is the leading case. In all this class of cases the plaintiffs generally allege the acts of the defendants as wrongfully and maliciously contrived to injure them. This allegation, if not absolutely essential, is sufficient if maintained by proof, and is easily made. But malice being a question of fact, such a complaint is good upon demurrer, the malice being thereby admitted, and consequently such cases as *Delz.* v. *Winfree*, 80 Tex. 400, and *Olive* v. *Van Patten*, 7 Tex. Civ. App. 630, both of which contained such allegations and were decided upon demurrer, while correctly decided, are not opposed to other similar cases which were not decided upon demurrer, although they are stated to be so in a note to the case under discussion in 24 Am. Law. Reg. 776. The defence of the exercise of a legal right or privilege is so far an affirmative one that it must be set up by the defendants, as a consideration of the articles of J. H. Wigmore and Judge Holmes in previous numbers of this REVIEW will show. Judge Holmes in his excellent article has also shown that a privilege or excuse of the defendant for the commission of a tortious act has its foundation and its limitation in a broad public policy.

The contention is made, however, in the class of cases under discussion, that, "if the acts of the parties to the agreement are such that they do not serve a legitimate purpose, but appear to be wanton and malicious, an ac-

[1] For this note the Editors are indebted to Mr. William R. Tillinghast, of Providence, R. I.

tion will lie at the suit of the party injured." 24 Am. Law Reg. 776, 777. But, as intimated above, malice or ill will is a matter of fact, and as such is to be found by the jury, and it is scarcely conceivable that a sound public policy can require, after the court has determined that a contract is not void as a matter of law, that it shall still be submitted to a jury to determine whether or not it has been made maliciously. And further, when the subject to be dealt with is not a contract at all, but merely the negative privilege of refusing to make a contract, how can it possibly be submitted to a jury? It appears to be inconceivable that the freedom of trade so tenderly nurtured by English and American law could endure such a restraint. The alternative of making the privilege of contracting or refusing to contract wellnigh absolute, has almost universally been adopted by the courts. The only case to be found, it is believed, in which this defence was properly set up and failed, is *Jackson* v. *Stanfield*, 137 Ind. 592, but it is to be said that in that case the defendants had gone so far as to require and collect a money penalty from the seller, which may be outside a proper privilege, although the court in deciding the case does not appear to rest its opinion upon any such ground, and the Minnesota court in *Bohn Mfg. Co.* v. *Hollis*, 51 Minn. 227, 232, a case growing out of similar facts except that this penalty had not there been collected, does not seem to think this feature would destroy the privilege. But unless the case of *Jackson* v. *Stanfield* can be reconciled on this ground, it seems clearly to be opposed to every case of a similar kind, either in England or the United States, that has come under observation.

Another and very interesting question appears to be further raised, however, by such cases as that of the *Toledo, &c. Ry. Co.* v. *Pennsylvania Co.*, 54 Fed. Rep. 730, 737, 738, and *Temperton* v. *Russell*, [1893] 1 Q. B. 715; namely, whether the privilege set up in defence must not be, not only personal to the defendant, but also for his own benefit. If we can neglect the duty imposed upon a common carrier by common law and Federal statute, which existed in the former of these cases, they seem to present a state of facts essentially as follows. The defendants in these cases had directed or threatened to direct the members of the voluntary associations of which they were officers to cease to work unless certain demands of theirs were complied with, and it would seem safe to assume that such a refusal to work in any ordinary case would certainly be their undoubted right and privilege. But in these cases the refusal was made or threatened, not for the benefit of those refusing to work, but to assist others to accomplish their object; in other words, the strikes were or would have been what are commonly called "sympathetic." In both cases the defendants were enjoined. If, disregarding the duty resting upon common carriers, these cases are rightly decided, it would seem to follow that the privilege set up in defence must be exercised for the personal advantage of the defendant, it may be of course in common with others, but not for the benefit solely of others. In other words, the privilege finds its limitation, as a matter of law, in the benefit to be obtained for the person exercising it and those acting with him. Is this the law? If so, every "boycott," as distinguished from a "strike," is illegal, whether accompanied by threats and intimidation or not. It would seem doubtful if such were the law at present.